

single hearing on a judicial nomination, not one, didn't confirm a single judicial nominee. When I became chairman of the reconstituted committee, 10 minutes after that we started having hearings. In fact, the Presiding Officer knows that a Republican appointee from his State, a nominee to the circuit court of appeals, the Presiding Officer and his colleague came to me and talked to me about it. That judge moved forward. Look at this chart. We have here the green line.

This is what happened in the first term of George Herbert Walker Bush. By October 15, they had four judges. Take a look at President Clinton. He didn't get his first judge until September. By this time, we had four. Look what happened under our chairmanship. Within a couple of weeks of becoming Chair, I was having hearings on nominations. So this baloney about numbers—I thought I would share the facts.

An easy fact to remember is that during this part of the year the Republicans didn't hold a single confirmation hearing or confirm a single judge. I have gone now faster than the first year of the last two Presidents—both President Bush and President Clinton—twice as fast, actually, moving judges through than it was done in their terms. That is only since becoming chairman of the committee in July. I held hearings two different days during the August recess. I was roundly criticized by two Republican members on the Judiciary Committee for even holding the hearings. You are almost damned if you do, damned if you don't.

That is fine. They have an absolute right. I believe in the first amendment.

The more important question here is not the judges.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Chair needs to interrupt for a moment to close morning business.

Mr. LEAHY. I yield the floor.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 5 p.m. having arrived, the Senate will resume consideration of the motion to proceed to H.R. 2506, which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to the bill (H.R. 2506) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2002, and for other purposes.

The PRESIDING OFFICER. Who yields time?

Mr. KYL. Mr. President, for the edification of the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Senator McCONNELL asked that during the period of time prior to the vote I represent him. I will be happy to do that. I assume that since the proponent of the legislation is the Senator from Vermont, he will want to begin, and I respect that.

I presume from the shrug, the Senator from Vermont does not wish to move forward, in which case I will be happy to continue with the discussion.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I will respond to a couple of things the Senator from Vermont had to say. I very much appreciate the burden he carries as chairman of the Judiciary Committee, and the fact he was not in the majority until June. However, I think it important to point out there is a reason the chairman of the Judiciary Committee before him did not hold hearings on nominees.

We will all recall that it took President Bush a little while to secure his office this time, and he was probably a good 6 weeks or so behind. I am not sure how that translates into making nominations to the bench, but by early May he, indeed, was making nominations. There are a whole number of nominations that were made on May 9, as a matter of fact, and then following that, on May 25 and then in June, and so on.

Very shortly after he was sworn in, he began the work of nominating people to fill the vacancies on the court. It is important to point out that, probably more than any of the last four Presidents, himself included, he has acted with alacrity to fill vacancies. As a matter of fact, by the beginning of the August recess, in the short time that President Bush held office, the President had submitted to the Senate 44 judicial nominees. Let me put this in perspective.

President Reagan had submitted 8 nominees before the end of the August recess, President Bush submitted 8 nominees before the August recess, and President Clinton submitted 14 nominees before the August recess. President Bush submitted, as I said, 44 nominees before the August recess.

It is true that those were not submitted in February and March and April. Obviously, he was just taking office at that time. To point out no hearings were held before the distinguished Senator from Vermont became chairman of the committee I think does not represent the situation in any accurate way for us to take action now.

The fact is, we had 44 nominees pending prior to the August recess, 108 vacancies currently, and therefore it is time to act. Whatever the situation was before June, we now know we have all of these nominees. My question is, Why are we not acting on them?

In terms of hearings, it is true the Senator from Vermont has held hearings, but the problem is he does not put very many judicial nominations on the hearing calendar. In contrast to his

predecessor, Senator HATCH, who averaged 4.2 judicial nominees per confirmation hearing, Senator LEAHY has been moving at about a third of that place—1.4 judicial nominees per confirmation hearing. It is a little hard to fill these 108 vacancies when you are only having 1.4 nominees per hearing and you only hold the hearings on the schedule they have been held so far.

As a result, we have only confirmed eight judges. That is the reality of where we are today.

The fact that we have 41 designated emergency judges as indicated by the Administrative Office of the Courts does not concern anyone? It certainly concerns me as a Senator representing a border State, where I have three nominations pending, with no action being taken on those.

There are 21 nominees pending in the Judiciary Committee who are slated to fill positions which have been declared judicial emergencies by the Administrative Office of the Courts. Why are we not holding hearings on these nominations? As far as I know, there is nothing to prevent us from holding hearings, and if I am wrong, I ask the distinguished chairman of the committee to tell me how I am wrong.

He says anyone who takes the position I have taken is utterly lacking in judgment. I ask him to perhaps reconsider that comment. Perhaps I can ask the Senator from Vermont who he thinks is acting like petulant children in the schoolyard—the other comment he made.

The fact is, we have had time to hold hearings, and there are all of these nominations pending. They were pending before the August recess. There is nothing preventing us from holding the hearings. There is nothing preventing us from voting on those nominations in the hearing, nothing except politics, I submit, and that, at the end of the day, is apparently where we are.

I do not like to hold up other business any more than anyone else. It is important to get the foreign operations bill done. Clearly, we will do that. But for those who say we are just so busy doing other things, then I am forced to say, fine. Then let's stop until we can get some of these nominations to the floor for a vote and acted on.

Mr. President, I wish to make one other comment. These are not my words but the words of the distinguished Senator from Vermont. When Bill Clinton was President and there were fewer than 85 vacancies—now there are 108—Senator LEAHY took the position that “[a]ny week in which the Senate does not confirm three judges is a week in which the Senate is failing to address the vacancy crisis.”

When there were fewer than 70 judicial vacancies, the Senator told the Judiciary Committee:

[W]e must redouble our efforts to work with the President to end the longstanding vacancies that plague the Federal courts and disadvantage all Americans. That is our constitutional responsibility.